

**Documents Released by the San Diego City Attorney  
June 15, 2007**

**#1**

**14 June 2007, Transcript of Mayor's Statement regarding Stop Work Notice on Hedgecock Radio Show**

**#2**

**16 October E-mail from City Attorney requesting Stop Work Order be issued on the Sunroad Centrum Building**

**#3**

**19 October 2006 Letter from the City Attorney that a Stop Work Order Directive must be issued on the Sunroad Centrum Building**

**#4A**

**27 October 2006, E-mail from City Attorney to Development Services Department regarding language to be used in Stop Work Order**

**B.**

**27 October 2006 Stop Work Notice issued by City of San Diego Development Services Department**

**#5**

**21 November 2006 Letter from Sunroad Vice- President Tom Story to City's Development Services Department for authorization to install roofing on the Centrum 12 building.**

**#6**

**13 December 2006 Stop Work Notice Modification issued by City's Development Services Department**

**#7**

**19 December 2006 E-mail from Enoch Light re: Conference Call regarding Sunroad**

**#8**

**19 December 2006 E-mail from Enoch Light meeting with Aaron Feldman meeting & Tom Story regarding Sunroad in Mayor's Office**

**#9**

**21 December 2006 letter from Marcela Escobar Eck to Sunroad Enterprises Tom Story regarding revision of Stop Work Notice to allow Sunroad to install the weather proof covering on the 12-story structure.**

**#10**

**SD City Municipal Code Section 121.0205, Authority to Issue Stop Orders**

Roger Hedgecock's Interview with Mayor Jerry Sanders  
KOGO Radio  
June 14, 2007 4:30 p.m.

RH = Roger Hedgecock  
JS = Mayor Jerry Sanders

RH: Well, I didn't, but, I have to admit it was \_\_\_\_\_. She's our Pink Floyd expert.  
Laughter. Uh, this has been an interesting week for you.

JS: This has been an interesting week for me. As it is every week.

RH: Well, I know this this one got very interesting, because whereas in the first part of your term, you and Mike Aguirre were working pretty closely together and I was talking to Kevin Faulconer the other day and he was kind of pining for the time when uh you know you and he and Aguirre were getting things done and working together and it uh it blew up this week uh pretty significantly, over the subject of the Sunroad uh project.

JS: Well you know I I actually think it blew up over the budget. And you know when you make reform everybody's for it until it affects them and when you have to streamline the City and you have to cut staff and you have to make tough decisions, uh everybody's for that unless it affects them. And I I really think this is as much about that issue as anything else. And you you know we cut a lot of employees. I was happy to get the budget signed yesterday. Um, not as many cuts as I had wanted, but I still think it was a good budget with 639 uh positions cut permanently, along with the ones we had last year, adding up to about seven hundred, or 650. Um, so I, you know, I I understand uh the consternation of the City Attorney over uh not getting additional staff in there. But I think that's got a lot to do with it also.

RH: Okay, so his attack in in terms of the charges he's made of regarding Sunroad are motivated because he didn't get enough lawyers.

JS: I think you know, I I I think Mike cares very deeply about the Sunroad issue and I'm not going to try and take that away from him. And I think that's important to acknowledge that. And I will.

RH: Okay.

JS: And I think it's an important issue also.

RH: Uh, last week when I asked you about this issue.

JS: Right.

RH: Uh, let me give you the question and answer from last week's interview so we can set this up so you'll know. . .

JS: Well, I can read it back to you if you'd like. I've got it transcribed also.

RH: Well I want our listeners to hear it. Here it is:

JS: Okay.

**Running Tape:**

RH: . . ."City Attorney is saying that uh you have uh borrowed the services of an executive from the San Diego Airport Authority, one Ted Sexton, and that he is uh trying to discover a way to change the flight patterns of Montgomery Field to allow the too tall building to remain the same height because it's no longer a hazard, is that true?

JS: No, we brought Ted Sexton over on an agreement with the uh Airport Authority where uh he is a loan executive. He is not uh paid a salary by the City of San Diego. He is instead paid by the Airport Authority and his job is to evaluate um whether Brown Field and Montgomery Field are being run uh correctly and whether we should be doing it, or whether the Airport Authority should be doing it."

RH: So, that's uh, there was a longer answer, but that's the meat of it. Um, now, you know, then Aguirre sends me this letter dated March 2<sup>nd</sup>, signed by you to Alan Bersin at the San Diego Regional Airport Authority, the chairman. Uh, and it's regarding Montgomery Field Sunroad litigation. And it says, "Dear Alan, the City of San Diego is involved in litigation regarding a building constructed by Sunroad Enterprises near Montgomery Field. The building is already constructed to its maximum height, although interior improvements are not complete." Uh then you skip it skips, I'll skip down to say the part of this, "I would appreciate it and am requesting that the Airport Authority assist us in analyzing the situation..." uh and I guess they are talking about Sunroad, "...and in working with the FAA and other interested stakeholders in an attempt to resolve this issue. Given the Authority staff experience in aviation and in FAA matters, your help would be invaluable providing my office with clear and dispassionate guidance and advice. Let me know if the Authority will help with this important effort." It doesn't say anything about the uh, you know, the evaluation of whether Brown Field/Montgomery Field are going to be run correctly or whether or not the City should be doing it, it says you need help in the Sunroad FAA's controversy.

JS: You, you know Roger, I, I understand exactly what you're saying. And if I misled you, I'm sorry, because I take this seriously. But let me take a few

minutes to put this in context with a couple of other memos and some other conversations that had gone on prior to this. Um, early in the administration, and I'm talking about even before Jim W\_\_\_\_, Jim Barwick uh were on board, Ronne Froman, uh Rick Reynolds, uh discussed options uh for greater efficiencies and and started talking about the airport issue. Uh, and, in fact, in January of '06, uh Ronne informally contacted uh the Airport Authority and expressed interest uh in having them take a look at taking over managerial responsibility of both Brown and Montgomery Fields. So, those conversations started in January. And, in fact, in a board communication from the San Diego County Regional Airport Authority, and this one's all board members, and anybody else who wanted it, Thela Bowman, and this is in March of 2006, says basically "in January staff was contacted by members of the Mayor's staff with the idea of discovering if the Authority has an interest in managing or controlling City airports." It goes on from there. Uh, I wrote back a letter in June of 2006, and that's to Thela Bowman, and I said, "this letter confirms the City of San Diego's interest in exploring the possibility of an agreement with the San Diego County Regional Airport Authority uh to assume control of Brown and Montgomery Fields." And I uh talk about several things that an agreement we could talk about, uh general financial uh arrangements, lease terms, duration, ownership, uh revenues, the role and authority of the City Council and management and decision making. Uh, I talked about the Airport Capital Improvement Program, along with uh FAA and that, grant issues with FAA, environmental cleanup – a whole list of issues. Um, and another discussion took place in December uh with Ronne Froman and Jim Waring, and Mike Tussey, and Thela Bowman, and Ted Sexton, to discuss the future of Brown Field and Montgomery Field. So you we've got all of those um issues coming forward. Uh, you know, this started almost a year before these other issues came forward. And we started talking with the Airport Authority about that. And when the whole issue with uh Montgomery Field came up we did send over those letters. Uh, but it was to, it's the whole scope. And if you look at the March 31<sup>st</sup> um services agreement, um, you've got the scope of services right in there. It talks about FAA. Um, work with City staff to identify issues relating to FAA and Cal Trans to facilitate increased communication. And that's something we've sorely needed and we have used, uh over the last several months, I mean, we have worked on all the issues with Montgomery Field and the Sunroad. But, as you brought up last week, we also have identified, because of the coordination there now, uh an issue in Banker Hill. Where uh the FAA issued a stop work order to uh an architect on a project uh and then later rescinded it because the communication we had back and forth because it, they mismeasured the building. It was actually the right height; it wasn't over the height limit.

RH: Alright, but let's talk about Sunroad.

JS: So that's .....

RH: I mean, I I under, I understand that you had these previous things, but when you actually sent a letter to ask for Ted Sexton which you hadn't done before March 2<sup>nd</sup>, 2007, right?

JS: No, but we had asked for the help on the whole thing.

RH: Well, okay. But you didn't ask for a loan executive. You didn't ask for a formal uh sending the guy over to actually start doing work. When you did ask for that, it was for the purpose of the Sunroad litigation, and Alan Bersin wrote you back on March 12<sup>th</sup>, and he said, in part, "Thank you for your letter dated March 2<sup>nd</sup> to Mayor Sanders in which you request assistance San Diego County Regional Airport Authority to help resolve issues surrounding the Sunroad Enterprises building near Montgomery Field. We are glad to provide the assistance you requested."

JS: Right.

RH: Um.

JS: We also put together that agreement, the services agreement. Uh you, you, and you know, and I sat with Mike Aguirre on May 18<sup>th</sup> and this wasn't an issue. And all those scopes of services and everything were out in the public then. So, you know I guess what I'm telling you is there's a larger context to all of this. And if I confused you, or if I've misrepresented it to you, I apologize for that. That's my fault.

RH: Well, it would have, it would have been more understandable had you said, all of what you just said. Mainly we had all these previous conversations, and we are concerned about the effect of administration, but we had a crisis situation with Sunroad, so for all of that uh Ted Sexton came over and started working.

JS: Well, I agree with you. It would have been much less confusing.

RH: Now, here's a more serious problem. Um, Enoch Light is not only, I guess, the name of a uh obscure '70's rock band, but uh your *nom de guerre* in terms of [laughs] of e-mail.

JS: No.

RH: It isn't?

JS: No. It's the City's, uh the Mayor's Office e-mail system. And uh, I learned this today; I didn't know what it was. Uh each of the different departments in the City have their own domain. And they're named different things, uh by different departments. And this was named by uh the person from DPC a few years ago

when uh they brought in Enoch Light, which is a uh an e-mail, it's a domain within the City's GroupWise system.

RH: So if something, if an e-mail goes out from Enoch Light, who is it from?

JS: It could be from anybody in the Mayor's Office. Or anybody, I don't know how far that goes.

RH: Okay, and if you say if you got a ....

JS: I don't use e-mail.

RH: Okay -- laughs.

JS: I don't use it at all.

RH: Okay, well then that, that may be a problem. Um, but here is a, a copy of an e-mail and a copy a cc: of this went to Shelia, Sheila? Billiard from Enoch Light to Enoch Light and Jim Waring; Date: Tuesday, December 19, 2006; uh Time: 4:30-5:00 p.m.; Subject: Meeting with Aaron Feldman and, and Tom Story; Re: Sunroad (Jim Waring); Place: Mayor's Office.

JS: Right.

RH: Now, the Aguirre accusation is that this date, December 19, two days before the stop work order was modified to allow uh Sunroad to complete the building, um, there was a meeting in your office with you, Tom Story, Aaron Feldman, and Jim Waring, who heads up your department. Uh, two days later the stop work order was modified and Aguirre's charge is that you modified it on behalf of a campaign contributor.

JS: Well (laughs), let me go back into that one. Uh we did have that meeting. Aaron Feldman asked to come over and explain his side of the story. Um he came over and uh said that uh he didn't want to file a lawsuit against the City. Uh he didn't want to file a lawsuit for quite a bit of money against the City, but he was feeling compelled to because uh he felt that he had done everything correctly, even though we now know that that's not the case. Uh he also felt that um it was if we couldn't winterize that building, it was going to create damage in there uh that couldn't be taken care of and if they sued us we were going to owe a lot more money for that. Um I talked with Jim Waring, we had conversations, and basically the decision was made to let the building be winterized so we could mitigate any damages in case there was a lawsuit and in case we lost. Because we lose quite a few lawsuits. Uh and I thought that the right decision was to let it be winterized so that if we did lose the lawsuit, and we have been sued since then, uh that we were not going to have to pay as much of the damages because it simply hadn't allowed it to be destroyed on the inside.

RH: Do you think that Aaron Feldman lived up to the verbal agreement that you're now describing that he had with you?

JS: No.

RH: In what specific respect?

JS: Well, when uh they talk about winterizing, uh, you know, I I think what my expectation [sic], or or my impression of winterizing is is you uh put some type of coating around the outside so that rain can't get in, so that wind can't blow in, so that all that can't happen. It certainly didn't mean putting new architectural features at that wing that's on there now. It didn't mean any of those things. And that's the mistake we made in not stopping it quickly enough.

RH: You know the um the modification of the stop work order that went out on December 21<sup>st</sup>, two days later, was signed by Marcela Escobar-Eck, who had been involved in this uh project for some time and knew exactly uh what uh was uh expected. And she said, quote, in the letter sent to Tom Story, uh in the "in the interest of saving the structure from damage which could be caused by weather, your request will be allowed for this phase of construction for the items discussed at the field meeting of December 1, with Joe Harris, subject to your concurrence with the terms of this letter." Uh, unquote. Do you think Marcela Escobar-Eck would follow this project very minutely? Tom Story who was aware of this project very minutely. Um, that they understood that the weatherization part of this uh thing would be basically be the construction of the top two stories.

JS: You, you know I don't know what Marcela understood. I I just don't know that answer.

RH: You haven't asked her?

JS: No I haven't asked that specific question.

RH: Do you know that in your bureaucracy there's somebody who's supposed to, that actually is designated by your procedures and state law, to sign uh, because it's a pretty serious matter. You know, stopping work. A stop work order is a pretty serious matter. And there's actually a building official that's designated to do that.

JS: Right.

RH: It's not Marcela.

JS: No comment.

RH: I mean, and and and and Waring had to change the the policy in your department because the guy who was supposed to do it, the guy who was actually uh under the policies and the state law required to do it, in terms of modifying any stop work order, refused to do it.

JS: You know, we talked about that issue this afternoon and I I I don't, I'm not sure that's exactly right.

RH: What is exactly right?

JS: Well, my understanding is Marcela asked him if he wanted to do it, if we was willing to do it, and he said no.

RH: And he's the officer that's supposed to do it.

JS: Well, I'm not, I I I don't know that [sic] answer to that. Um...

RH: But it's an important point.

JS: Well, it it's an important point and that's the reason I'm not going to commit to something I don't know the answer to.

RH: Okay.

JS: Uh, I do know she said if you don't want to do it, then I'll do it myself. And that's what she did.

RH: Uh, this particular building official who was designated to issue stop work orders and any amendments to them, any changes to them, refused to do it, wouldn't allow his deputies to do it, and Marcela did tell him, as I understand it, Okay, then I'll do it. Uh she....

JS: And and I understand it differently, but that's....

RH: What... how do, how do you under, I'd like to know how you understand the....

JS: I understand that she went to him and asked him if he was willing to do it and he said no. And she said alright, I'll do it. She didn't try to put the pressure on him to do it, knowing that it was a political situation.

RH: Did she have the authority?

JS: I I don't know that answer. That's what I told you, Roger.



RH: Okay. So I just wanted to make that clear that a stop work order modification went out, not from the person that would normally do it, because Marcela went and asked him to do it in the first place. Right?

JS: Yeah, I I just don't know that answer.

RH: Well you just told me she did.

JS: I'm telling you that she did not pressure him to do it. She said if you don't want to do it, I'll do it.

RH: In other words, in other words she went and asked him to do it.

JS: Right.

RH: And he wouldn't do it.

JS: He said he would prefer not to.

RH: Yeah, so, she went ahead and signed it, when in fact, while that was not normally done.

JS: Inaudible (both talking at same time)

RH: How many other stop work order modifications do you think Marcela signed?

JS: I I don't know. I don't even know how many we put out.

RH: Alright. I don't, I don't either. But, it was an, it was an unusual moment in your bureaucracy. Anyway, uh I I, and more importantly than that, let me get back to Ted Sexton. And I want to uh I want to ask you, now that we know a little bit more about the circumstances under which he came over from the Airport Authority, isn't it true that his responsibility at the Airport Authority is interaction with uh with the FAA and regulatory bodies?

JS: He he's an executive vice president. He has extensive interaction with the FAA and regulatory bodies.

RH: Right. So when he came over, this was part of the thing you were you were seeking is that expertise. And in fact he prepared for a meeting down in Texas of FAA officials, some a, a solution, an alternative solution to the Sunroad uh problem, right?

JS: As I said, we looked at every solution we could think of to protect public safety.

RH: And how many solutions did he present to the FAA in Texas?

JS: Uh, I'm not sure. I think he only presented one, which was the southern uh flight pattern.

RH: Okay. And he did that after consulting with you?

JS: Uh, no.

RH: Who did he consult with?

JS: I'm sure he consulted with uh our staff and all of that. I knew that he was going to present possible solutions. Uh we also presented uh having the Sunroad building down to 163 feet with uh one elevator tower in there. Uh, so we presented a range of solutions and basically the FAA came back and said uh we are willing to change the flight pattern, but we are not willing to uh allow you to uh take the building down to 163 feet with the uh elevator tower sticking up. Uh so you need to change the flight pattern, or you leave it in place like it is. And that's when I made the decision. I made the decision later uh that we're not going to change the flight pattern. Uh Sunroad's got to reduce the size of the building.

RH: Now, in terms of (laughs) reducing the size of a building, I mean, the building is there. It's at 180 feet.

JS: Right.

RH: It's twenty feet higher than uh the FAA says it should be.

JS: I agree.

RH: So, you're putting the whole thing now on a lawsuit filed by Aguirre uh after the actions of people who work for you allowed them to build a building to 180 feet.

JS: Well, yeah I am. In fact I've said we made a mistake on that building. We tried to get advice from the City Attorney's Office before it went up to the 180 feet and couldn't get it. Uh we made a mistake and let that building go up. I'm I'm relying on the City Attorney now uh to get the lawsuit in there where we have them reduce that.

RH: And he's saying, and I think this is the latest I got here, that, based on the City's actions, it undercuts the uh lawsuit because the Sunroad gets to go into court and say wait a minute, everything we did, we have all these letters from everybody at the City telling us these are things we can do.

JS: Well I don't think that's entirely true, Roger. And I'm I'm not going to quibble as things Mike's saying about undercutting. But I made it very clear and then a a letter I put out on Monday of this week, I said that we were going to stick with the same flight patterns, we were going to stick with everything so that the uh lawsuit that the City is putting together would not be undercut. Um, I feel very strongly

that we have a good lawsuit on that, and it's time for Mike to get into court and get that taken down.

RH: Uh, is Ted Sexton still a loan to the City?

JS: Yes.

RH: And what is he working on now?

JS: He has helped us on, as I said, uh he has helped us uh the Banker Hill issue, on the Sunroad issue in uh the harbor, uh he has helped us on, on the La Jolla Colony uh project, where we got uh, or the the developer got approval from the Marine Corps. uh to build anything to 360 feet and then FAA came in and said wait a minute, they do not speak for us. Uh and we worked it out, the developers voluntarily after working on that issue, taking the project size down. So he's worked on those, along with um, he's still working on the Brown Field and the Montgomery Field issues to my understanding.

RH: Other than the um, that southern uh flight, reorientation of the flight pattern at Montgomery, to help try to solve the Sunroad problem, did he offer any other alternatives to uh solve the problem with Sunroad, you described the one about uh leaving it at uh 163 plus the elevator and so forth, but in terms of of the actual with the FAA, was there any other alternative he developed?

JS: There was uh, I I think there still is another alternative, and it involves uh newer instruments that uh has everybody land from the east and uh, I don't know the details of that. Um, he had worked on that solution also. That's a a long term solution. But uh really what we decided was that um in order not to undercut the lawsuit and uh to keep us from rerouting traffic over residential areas, that we were going to uh keep the same uh level that we are at right now uh in terms of that level of hazard that's up there. The pilots have to fly at I think it's 960 feet instead of 880 feet. And we'll keep that in place until the Sunroad building comes down.

RH: Alright. On another topic, uh council member Donna Frye and uh Bob McElroy, the president and CEO of the Alpha Project were out at the .....

#

**From:** David Miller  
**To:** Jim Waring  
**Date:** Mon, Oct 16, 2006 12:29 PM  
**Subject:** Sunroad Spectrum Building 1

Jim,

The City Attorney, Michael Aguirre, requests that the Development Services Department of the City of San Diego immediately issues a "Stop Work Order" for the above-reference building, as continued construction is in violation of PUC section 21659 and Federal Aviation Regulation (FAR) Part 77 Obstruction Standards. More importantly, the current height of the building, 180', poses a risk to human life both in the air and on the road.

On August 11, 2006, the building was determined to be a "Hazard to Air Navigation" by the Federal Aviation Administration. see <https://www.oa.faa.gov/oa/EXT/letterViewer.jsp?letterContentID=484230>. The FAA cited that the structure has "a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft."

The risk created by the structure places it within a category of "Public Nuisance." "Public Nuisance" means any condition caused, maintained or permitted to exist which constitutes a threat to the public's health, safety and welfare or which significantly obstructs, injures or interferes with the reasonable or free use of property in a neighborhood, community or to any considerable number of persons. SDMC section 11.0210.

As a "Public Nuisance," the City may take immediate actions to abate. "Section 121.0302(i) of the San Diego Municipal Code provides that "[t]he City may take any appropriate enforcement action to abate a **public nuisance, despite the issuance of any permits** to maintain, alter, expand, demolish, or reconstruct a structure, or to operate or resume operation of a use."

Following the issuance of the "Stop Work Order," the City Attorney's Office requests that a permit revocation hearing be scheduled pursuant to San Diego Municipal Code Sections 121.0314(c)(3) and (4), which allows for the revocation of building permits issued.

Other avenues of enforcement shall also be pursued.

Sincerely,

David E. Miller  
Deputy City Attorney  
(619) 533-6458  
demiller@sandiego.gov

**CC:** Abbe Wolfsheimer; Carmen Brock; Chris Morris; Karen Heumann; Kelly Broughton; Shirley Edwards

DAVID E. MILLER  
DEPUTY CITY ATTORNEY

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TELEPHONE (619) 533-5800  
FAX (619) 533-5856

October 19, 2006

**VIA HAND DELIVERY**

Jim Waring  
Deputy Chief Operating Officer  
Department of Land Use and Economic Development  
City of San Diego

Dear Mr. Waring:

*Sunroad Centrum Building 1*

As you are aware, on August 11, 2006, the Federal Aviation Administration [FAA], completed an aeronautical study under the provisions of 49 U.S.C., Section 44718 and Title 14 of the Code of Federal Regulations, Part 77, concerning the Sunroad Centrum Building 1 Project [Project]. The aeronautical study revealed that the structure as built would have a "**substantial adverse effect** on the safe and efficient utilization of the navigable airspace by aircraft..." [emphasis added]. In light of this conclusion, the FAA has determined that the Project is a "hazard to air navigation." See *FAA Aeronautical Study No. 2006-AWP-4601-OE*. This determination was subject to review on or before September 10, 2006. No request for review was sought by the Project applicant. Thus, the FAA determination stands.

Under California Government Code section 50485.2, the City has a duty to prevent the creation of any hazard to air navigation using the police powers of the City. California Government Code section 50485.2 reads in relevant part:

It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of the aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; and (b) that **it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented by**

*appropriate exercise of the police power* or the authority conferred by Article 2.6 (commencing with Section 21652) of Part 1 of Division 9 of the Public Utilities Code. [Emphasis added].

In addition, San Diego Municipal Code section §121.0302(b)(4) makes it unlawful for any person to maintain or allow the existence of any condition that creates a "public nuisance." The City's Municipal Code defines "public nuisance" as "any condition caused, maintained or permitted to exist which constitutes a threat to the public's health, safety and welfare." SDMC §11.0210. Furthermore, California Government Code section 50485.2 defines "public nuisance" as the "creation or establishment of an airport hazard."

The Project, under both state and local law, fits squarely within the definition of a "public nuisance." As an "airport hazard," the Project is a "public nuisance," and, as a condition constituting a threat to the public health, safety, and welfare, it is also a "public nuisance." Therefore, by maintaining the structure at its current height, the Project applicant is maintaining a "public nuisance" in violation of San Diego Municipal Code section 121.0302(b)(4).

Pursuant to California Government Code Section 38773, the City has the authority to judicially abate public nuisances by filing criminal or civil actions. The City also has the authority to make the expense of abatement of the nuisance a special assessment, or a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with California Government Code Sections 38773.1 or 38773.5. SDMC §12.0204. The City may also abate any violation of a state code, which constitutes a "public nuisance." SDMC §12.0602.

In addition, to being a "hazard to air navigation" and a "public nuisance," the Project is being constructed without permits required by California law. California Public Utilities Section 21659(a) requires that an applicant obtain a permit from the California Department of Transportation prior to building any structure that would exceed the FAA obstruction standards included in Title 14 of the Code of Federal Regulations, Part 77, Subpart C [Part 77]:

No person shall construct or alter any structure or permit any natural growth to grow at a height which exceeds the obstruction standards set forth in the regulations of the Federal Aviation Administration relating to objects affecting navigable airspace contained in Title 14 of the Code of Federal Regulations, Part 77, Subpart C, unless a permit allowing the construction, alteration, or growth is issued by the department.

At Project location, a structure of 180' would exceed the obstruction standards under Part 77 and, therefore, require a state permit prior to construction. The Project applicant has not sought or obtained the state permit and is continuing construction in violation of state law. This violation is punishable as a criminal offense with a fine of not more than one thousand dollars (\$1,000) or by imprisonment of not more than six months, or both. Public Utilities Code §21019.

Finally, the City's permit revocation proceedings authorize the revocation of the building permit for the Project. Permit revocation is permitted where project approval violates an applicable statute, ordinance, law, or regulation; or when the approval is detrimental to the public health, safety, or welfare; or when the approval constitutes a public nuisance. SDMC §§121.0314(c)(4) and (5). The Project, as approved, violates Federal Regulations, the state Public Utility Code, and the San Diego Municipal Code. Additionally, the approval is detrimental to the public health, safety, and welfare, and constitutes a "public nuisance."

With knowledge of the declaration by the FAA that the building is a "hazard to air navigation," the knowledge that it is a public nuisance under both state and local law, and the knowledge that the building is being constructed in violation of state law, the City must issue a "Stop Work Order" for the Project.

Sincerely yours,

MICHAEL J. AGUIRRE, City Attorney

By


David E. Miller  
Deputy City Attorney

DEM:dem

Attachments

cc: Michael J. Aguirre  
Karen Heumann  
Carmen Brock  
Abbe Wolfsheimer  
Marcela Escobar-Ecks  
Kelly Broughton

# STOP WORK ORDER

 <p><b>America's Finest City</b></p> <p><b>THE CITY OF SAN DIEGO</b></p> <p><b>Development Services Department</b>          1222 First Avenue, MS 301          San Diego, CA 92101-4154</p>	<p><b>LOCATION:</b> _____</p> <p>_____</p> <p><b>APN:</b> _____</p>
<p><b>RESPONSIBLE PERSON:</b></p>	<p><b>MAIL ADDRESS FOR:</b></p> <p><input type="checkbox"/> <b>OWNER</b></p> <p><input type="checkbox"/> <b>CONTRACTOR</b></p> <p><input type="checkbox"/> _____</p>

**THIS STOP WORK ORDER is issued pursuant to San Diego Municipal Code sections 121.0205, 121.0309, and 121.0310 for work that is being performed at the above-listed location in a manner that is contrary to the provisions of the Land Development Code.**

<p><b>DESCRIPTION of Violations:</b></p>
<p><b>San Diego Municipal Code section 121.0302(b)(4) - maintaining or allowing the existence of any condition that creates a public nuisance:</b></p>
<ul style="list-style-type: none"> <li>• Public nuisance. SDMC §§ 121.0302, 121.0302(b).</li> <li>• Threat to public health, safety and welfare. SDMC §11.0210.</li> <li>• Airport hazard. Gov.Code §50485.2</li> <li>• Airport hazard. Substantial adverse effect on safe and efficient use of navigable airspace. 49 U.S.C. § 44718; Code Fed. Regs, Title 14, Pt. 77; FAA Aeronautical Study No. 2006-AWP-4601-OE.</li> </ul>

NAME OF INSPECTOR/STAFF (Print) \_\_\_\_\_

OFFICE TEL. NO. & TIME AVAILABLE \_\_\_\_\_

DATE \_\_\_\_\_



**From:** David Miller  
**To:** Jim Waring; Marcela Escobar-Eck  
**Date:** 10/27/06 11:50AM  
**Subject:** Stop Work Order

Attached is a Stop Work Order that has been reviewed and approved by our office as you requested.

I will also forward an email from Caltrans regarding their opinion on the hazardous condition.

David

**CC:** Abbe Wolfsheimer; Carmen Brock; Karen Heumann; Shirley Edwards



CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
DEPARTMENT

# NOTICE

JOB ADDRESS 8620 Spectrum Center Blvd		
CENSUS TRACT NO.	PERMIT NUMBER 30331	PLAN FILE NUMBER A
CONTRACTOR Swinerton Builders (858) 622-4049		
MAIL ADDRESS FOR <input type="checkbox"/> OWNER, OR <input type="checkbox"/> CONTRACTOR		

OWNER'S OR PERMITTEE'S NAME

☐ VIOLATION

**READ  
REVERSE  
SIDE**

☒ STOP WORK

NOTE:  
PRESENT THIS NOTICE WHEN  
MAKING APPLICATION FOR PERMIT

☐ CORRECTIONS REQUIRED

☐ PARTIAL APPROVAL

- ☐ NO PERMIT - REMOVE CONSTRUCTION, OR OBTAIN PERMIT AND MAKE ANY WORK COMPLY WITH BUILDING LAWS. (See comments on reverse side regarding penalty fees).
- ☐ CONSTRUCTION NOT IN ACCORDANCE WITH APPROVED PLANS AND PERMIT MAKE EXISTING WORK COMPLY WITH APPROVED PLANS AND PERMIT OR REMOVE IT.
- ☐ CALL ZONING DIVISION AT (619) 446-5000, CONCERNING VIOLATION OF ZONING REGULATION LISTED BELOW.
- ☐ CONTACT INSPECTOR AND ARRANGE FOR APPOINTMENT. (See telephone number below)
- ☐ CORRECTIONS LISTED BELOW MUST BE MADE BEFORE WORK CAN BE APPROVED.
- ☐ PAY REINSPECTION FEE (See back); THEN ☐ CALL FOR REINSPECTION AT (858) 581-7111
- ☐ WORK DESCRIBED BELOW HAS BEEN INSPECTED AND IS APPROVED.

This is a stop work notice regarding the top seventeen feet of this structure.

No work is to be done in this section of the structure until authorized by this department. FAA regulation must be clarified prior to continuing construction of the structure previously mentioned above.

For questions regarding this matter please contact Joe Harris (858) 573-1225

THE ACTIONS OR CORRECTIONS INDICATED ABOVE ARE REQUIRED WITHIN, 10 DAYS. THE SAN DIEGO MUNICIPAL CODE REQUIRES PENALTY FEES WHEN WORK HAS BEEN STARTED WITHOUT PERMIT.

NAME OF INSPECTOR (PRINT)

INSPECTOR'S SIGNATURE

OFFICE TEL. NO.

DATE

<input checked="" type="checkbox"/>	BUILDING
<input type="checkbox"/>	ELECTRICAL
<input type="checkbox"/>	HEATING
<input type="checkbox"/>	PLUMBING
<input type="checkbox"/>	REFRIGERATION
<input type="checkbox"/>	COMBINATION
<input type="checkbox"/>	SIGNS
<input type="checkbox"/>	MOBILE HOME

# SUNROAD

ENTERPRISES

November 21, 2006

Joe Harris  
Chief Specialist Inspector  
City of San Diego  
Development Services Department  
9601 Ridgehaven Ct., Ste. 220  
San Diego, CA 92123

4445 Enterprise Dr.

San Diego

San Diego, CA 92121

92121

Phone: 619-551-0100

Fax: 619-551-0101

Re: Centrum 12 Office Tower, 8620 Spectrum Center Blvd.

Dear Mr. Harris:

Sunroad requests authorization from the Development Services Department to install roofing on the Centrum 12 building located at 8620 Spectrum Center Blvd. The Stop Work Notice issued on October 27, 2006 has so far delayed our construction completion date by 20 days. It is critical that Sunroad be allowed to complete the roof on this structure as soon as possible to protect the existing and in-progress construction work and materials that are being installed in the lower 160 feet of the building and to avoid further delay of our project.

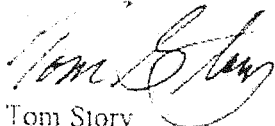
Specifically, Sunroad requests authorization to accomplish the following work that is the minimum necessary to make the roof waterproof:

- 1) Fireproof the elevator penthouse
- 2) Erect scaffolding around the elevator penthouse
- 3) Installation of mechanical and electrical roof curbs
- 4) Framing of the elevator penthouse
- 5) Installation of sheet metal flashing against penthouse framing
- 6) Plastering the elevator penthouse
- 7) Removal of scaffolding upon completion of plastering work
- 8) Installation of roofing at penthouse and building
- 9) Coping at roof parapet

While we clarify our position with the FAA, we believe it prudent that Sunroad be allowed to protect our existing investment in order to minimize the cost and/or liability to the City should Sunroad determine that we must seek compensation for any incurred damages caused by the stop work order.

Thank you for your consideration in this most urgent matter.

Sincerely,



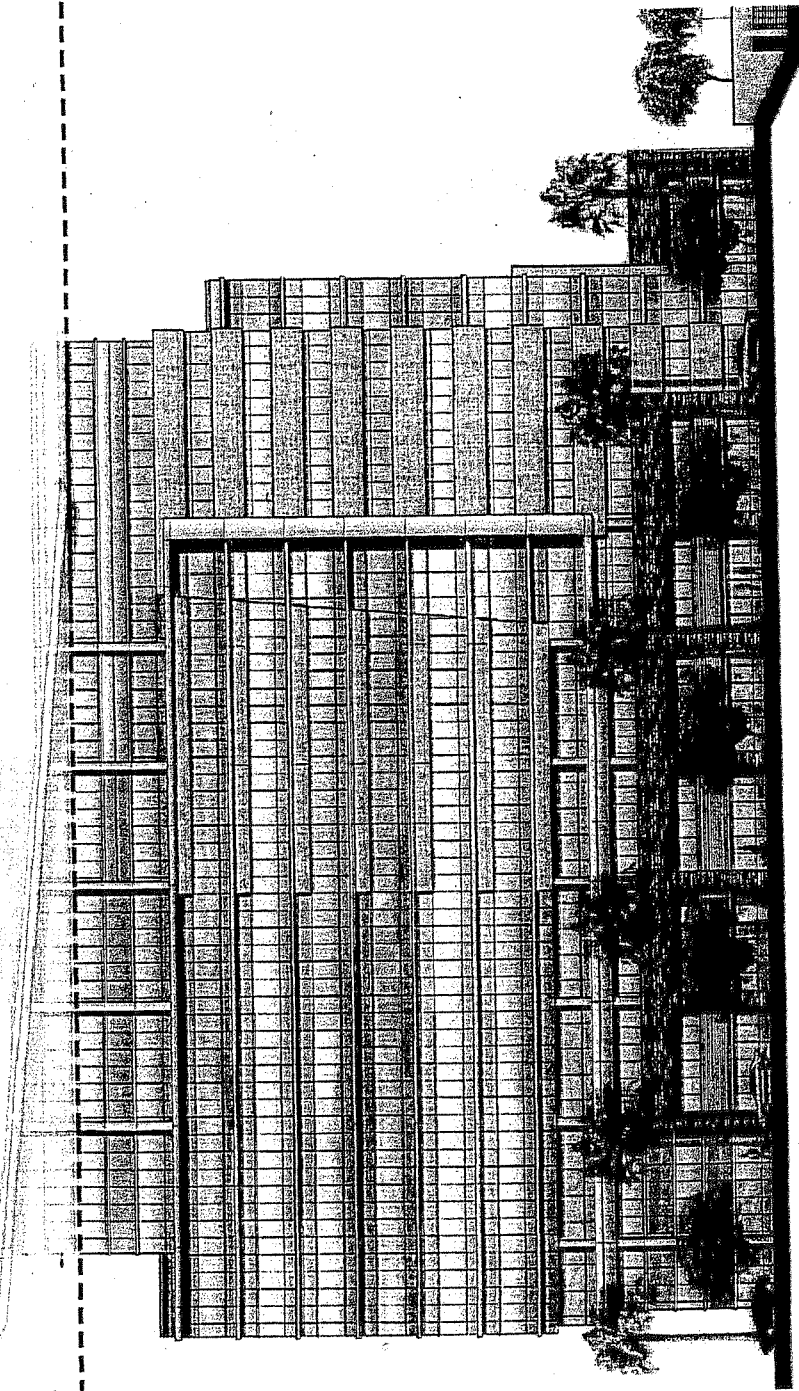
Tom Story  
Vice President, Development

Cc: Marcela Escobar-Eck

180'

+ 160'

163'



SUNROAD CENTRUM 12  
SOUTH ELEVATION

0 20' 60'  
SCALE 1" = 50'-0"



CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
DEPARTMENT

# NOTICE

OWNER'S OR PERMITTEE'S NAME

ADDRESS

8620 Spectrum Center Blvd

PERMIT NUMBER

303311

PLAT NUMBER

A

CONTRACTOR

Swinerton Builders

MAIL ADDRESS FOR

OWNER OR

CONTRACTOR

☐ VIOLATION

READ

☒ STOP WORK

REVERSE  
SIDE

NOTE

PRESENT THIS NOTICE WHEN  
MAKING APPLICATION FOR PERMIT

☒ CORRECTIONS REQUIRED

☐ PARTIAL APPROVAL

☐ NO PERMIT - REMOVE CONSTRUCTION, OR OBTAIN PERMIT AND MAKE ANY WORK COMPLY  
WITH BUILDING LAWS. (See comments on reverse side regarding penalty fees)

☐ CONSTRUCTION NOT IN ACCORDANCE WITH APPROVED PLANS AND PERMIT  
MAKE EXISTING WORK COMPLY WITH APPROVED PLANS AND PERMIT OR REMOVE IT

☐ CALL ZONING DIVISION AT (619) 446-5000, CONCERNING VIOLATION OF ZONING  
REGULATION LISTED BELOW

☐ CONTACT INSPECTOR AND ARRANGE FOR APPOINTMENT. (See telephone number below)

☐ CORRECTIONS LISTED BELOW MUST BE MADE BEFORE WORK CAN BE APPROVED

☐ PAY REINSPECTION FEE (See back). THEN ☐ CALL FOR REINSPECTION AT (619) 581-7111

☐ WORK DESCRIBED BELOW HAS BEEN INSPECTED AND IS APPROVED.

See stop work notice dated 10/27/06

This notice is to change the 17' to the  
top 20'

THE ACTIONS OR CORRECTIONS INDICATED ABOVE ARE REQUIRED WITHIN Fortwith DAYS. THE  
SAN DIEGO MUNICIPAL CODE REQUIRES PENALTY FEES WHEN WORK HAS BEEN STARTED WITHOUT PERMIT

Julia M. Rosales

NAME OF INSPECTOR (PRINT)

Julia M. Rosales

INSPECTOR'S SIGNATURE

858-492-5070

OFFICE TEL. NO.

12-13-06

DATE

☒ BUILDING

ELECTRICAL

HEATING

PLUMBING

REFRIGERATION

COMBINATION

SIGNS

MOBILE HOME

#29

**From:** Enoch Light  
**Date:** Tue, Dec 19, 2006  
**Time:** 10:00 AM - 10:15 AM  
**Subject:** Conference Call re: Sunroad  
**Place:** Mayor's Office

#7

#18

141

**From:** Enoch Light  
**To:** Enoch Light; Jim Waring  
**Date:** Tue, Dec 19, 2006  
**Time:** 4:30 PM - 5:00 PM  
**Subject:** Mtg w/Aaron Feldman & Tom Stroy re: Sunroad (Jim Waring)  
**Place:** Mayor's Office

**CC:** Shelia Billiard

#8



THE CITY OF SAN DIEGO

DSO

SUNROAD

13

#4

December 21, 2006

VIA FACSIMILE TO RICHARD D. VAN  
858/362-8448

Mr. Tom Story  
Sunroad Enterprises  
4445 Eastgate Mall, Suite 400  
San Diego, CA 92121

Dear Mr. Story,

Subject: 8620 Spectrum Center Blvd. Approval 303319

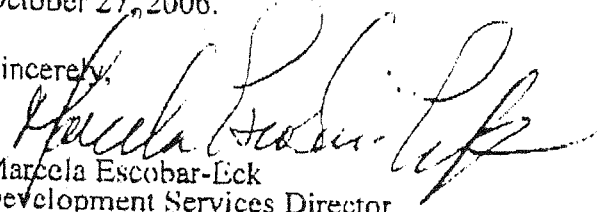
Development Services Department of the City of San Diego has reviewed your letter of request to install the weather proof covering on the 12-story structure mentioned above.

In the interest of saving the structure from damage which could be caused by weather, your request will be allowed for this phase of construction for the items discussed at the field meeting of December 21, 2006 with Joe Harris subject to your concurrence with the terms of this letter.

The "Stop Work Order," issued December 13, 2006, halting work on the top twenty feet (20' Ft) of the structure, shall remain in place.

This is based on our understanding that Sunroad accepts and acknowledges that any work performed from and after the date of the Notice (i.e., October 27, 2006) is at Sunroad's own risk and without any claim against the City. Specifically, Sunroad acknowledges and agrees that neither Sunroad nor its representatives may, under any circumstances, make any claim or assert any argument against the City for any costs or expenses of any type incurred after October 27, 2006 with respect to the work, nor assert in any way that the lifting of the Notice estops the City from pursuing the remedies that may result from the ongoing FAA inquiry. Said another way, whatever rights either party has vis-à-vis the other party will be the rights as they existed on October 27, 2006.

Sincerely,

  
Marcela Escobar-Lick  
Development Services Director

JH/lgb

Accepted and Agreed:

Tom Story

Date

Development Services

1222 First Avenue, MS 501 • San Diego, CA 92101-4155  
Tel (619) 446-5460

#9



## SDMC SECTION 121.0205 AUTHORITY TO ISSUE STOP ORDERS

*The City Manager or designated Code Enforcement Official may issue a Stop Work Order or a Stop Use Order in accordance with Sections 121.0309 or 121.0310.*

## SDMC SECTION 121.0309 PROCEDURE FOR ISSUING A STOP WORK ORDER

- (a) Issuing a Stop Work Order. *Whenever any work is being performed that is contrary to the provisions of the Land Development Code, the City Manager may order the work stopped by issuing a Stop Work Order. The Stop Work Order shall be in writing and shall be served on any person engaged in the work or causing the work to be performed. The person served with the Stop Work Order shall stop the work until authorized by the City manager to proceed.*
- (b) *City Attorney Review. Where a permit has been issued, the City Attorney shall approve all Stop Work Orders before issuance except where irreparable harm is imminent so as to warrant an emergency Stop Work Order. Where emergency circumstances exist, the order shall be issued according to the discretion of the City Manager or designated Code Enforcement Official with immediate subsequent review by the City Attorney.*

## SDMC SECTION 121.0310 PROCEDURE FOR ISSUING A STOP USE ORDER

*Whenever any structure or equipment regulated by the Land Development Code is being used contrary to the provisions of the Land Development Code, the City Manager may order the use discontinued and the structure, or portion thereof, vacated by issuing a Stop Use Order. The Stop Use Order shall be in writing and shall be served on any person engaged in the use to be discontinued. The person served with the Stop Use Order shall discontinue the use within the time stated in the Stop Use Order until authorized by the City Manager to proceed.*

## SECTION 260(b) OF SAN DIEGO CITY CHARTER

Under the Strong Mayor Form of Government, “All executive *authority*, power, and responsibilities *conferred upon the City Manager in Article V*...shall be *transferred to*, assumed, and *carried out by the Mayor*....”

## ARTICLE V, SECTION 28 OF SAN DIEGO CITY CHARTER

It is the *duty of the City Manager* “...to *see that the ordinances* of the City and the laws of the State *are enforced*” and “*all other administrative powers conferred by the laws* of the State upon any municipal official *shall be exercised by the Manager or persons designated by him*.”

In addition, “The *Manager may direct any Department or Division to perform work for any other Department or Division*.”

## SECTION 265(b)(2) OF SAN DIEGO CITY CHARTER

*“In addition* to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the *Mayor shall* have...the additional rights, powers, and *duties...[t]o execute and enforce all laws, ordinances,* and policies *of the City....”*